

# ARKANSAS SUPREME COURT

No. CR 08-180

DANIEL PLUNKETT  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered March 20, 2008

PRO SE MOTION TO REVERSE  
TRIAL COURT'S ORDER OR FOR  
BELATED APPEAL [CIRCUIT COURT  
OF POINSETT COUNTY, CR 2003-224,  
CR 2003-232, HON. VICTOR L. HILL,  
JUDGE]

MOTION TREATED AS MOTION FOR  
RULE ON CLERK AND DENIED.

## PER CURIAM

In 2004, petitioner Daniel Plunkett entered a plea of guilty to possession of a controlled substance with intent to deliver and delivery of a controlled substance. He received sixty months' suspended imposition of sentence on one count, and sixty months' probation on the other count. The State thereafter filed a petition to revoke the sentences. The trial court granted the petition and petitioner was sentenced to 240 months' imprisonment on each count to be served concurrently. The Arkansas Court of Appeals affirmed. *Plunkett v. State*, CACR 06-1064 (Ark. App. May 30, 2007).

Subsequently, appellant filed in the trial court a pro se petition pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition, and petitioner timely filed a notice of appeal. He tendered a partial record on appeal to this court past the ninety days<sup>1</sup> from the date of the notice of appeal within which Ark. R. App. P.–Civ. 5(a) requires that a record be tendered.

Now before us is petitioner's pro se motion to reverse the trial court's order, or for belated

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<sup>1</sup>The trial court's order of denial was entered on September 17, 2007, and petitioner filed a notice of appeal from that order on September 21, 2007. On February 12, 2008, a partial record on appeal was tendered to this court, which was 144 days from the date the notice of appeal was filed.

appeal, in which petitioner seeks leave to lodge the record belatedly and proceed with an appeal of the order. A motion for belated appeal will be treated as a motion for rule on clerk if a notice of appeal is timely filed. *Holland v. State*, 358 Ark. 366, 190 S.W.3d 904 (2004) (per curiam). We thus treat the motion as one for rule on clerk pursuant to Ark. Sup. Ct. R. 2-2(b).

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Leavy v. Norris*, 324 Ark. 346, 920 S.W.2d 842 (1996) (per curiam). With that right, however, goes the responsibility to timely file a notice of appeal and tender the record to this court within the time limits set by the rules of procedure. If a petitioner fails to tender the record in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The fact that a petitioner is proceeding pro se in itself does not constitute good cause for the failure to conform to the prevailing rules of procedure. *Id.*

Petitioner acknowledges in the instant motion that the transcript was supposed to have been filed in this court within ninety days, and he complains that the trial court did not issue an order for an extension of time in which to lodge the record. The remainder of petitioner's motion sets out the grounds advanced in his Rule 37.1 petition.

The partial record tendered by petitioner does not indicate that he sought an order for extension of time, nor does he state in the petition that he did seek such an order. Even if such a motion for an extension of time were filed, it was petitioner's responsibility to obtain a ruling on it. When proceeding pro se, it is not the responsibility of the circuit clerk, circuit court, or anyone other than the petitioner to perfect an appeal. *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam). Petitioner has stated no good reason for the late tender of the record.

Motion treated as motion for rule on clerk and denied.